



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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November 13, 2003

via e-mail and regular mail:

Lisa Croft, Federal Caucus Coordinator,
525 NE Oregon St., Suite 500
Portland, OR 97232-2778
Lisa.Croft@noaa.gov.

Bob Lohn, Director
Regional Administrator
NOAA Fisheries
Northwest Regional Office
7600 Sand Point
Seattle, WA 98115-0700

Re: *Nez Perce Tribe's Concerns with the Action Agencies' "Endangered Species Act 2003 Check-In Report for the Federal Columbia River Power System (FCRPS)"*

Dear Ms. Croft and Mr. Lohn:

We have reviewed the Action Agencies' 2003 "Check-In Report for the FCRPS" and we offer the following comments.

First, we find it troubling that we are commenting on the Action Agencies' "check in" for implementing a Biological Opinion which the Federal District Court has declared invalid in the *National Wildlife Federation v. National Marine Fisheries Service* litigation. As you know, we expressed serious concerns with NOAA's approach as it developing the 2000 BiOp because it did not provide the "major overhaul" to the hydrosystem that NOAA previously acknowledged was necessary. NOAA's failure to heed that concern led us to actively participate in the *NWF v. NMFS* litigation. At this 2003 "check in" point, we reiterate the comments we made in 1999 concerning the flaws in the federal government's salmon recovery efforts. Since that time, it has become increasingly evident that the Action Agencies and NOAA should be actively pursuing obtaining additional authority from Congress to ensure that all options are on the table for salmon recovery.

Second, we urge NOAA to accurately characterize what the Action Agencies have and have not done in NOAA's findings letter. This is not the first time that the Action Agencies have made the conclusory assertion that they are "on track." We are concerned that NOAA may rely on this inaccurate characterization of the situation as it develops a new BiOp for the FCRPS. The Action Agencies' assertion is hard to square with the reality that flow objectives have not been met and that no additional protective measures for salmon were provided to offset this situation,

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that BPA has reduced funding for the fish and wildlife program and that there have been no significant additional federal appropriations for salmon restoration, and that very few actual habitat restoration activities have occurred while federal land managers continue to propose activities with harmful impacts on salmon and steelhead. Many of these concerns are documented in the "Salmon Report Cards" issued by a number of conservation and fishing groups.

Finally, we look forward to addressing these issues directly with NOAA in a meaningful way, providing documentation of our concerns, and exploring opportunities for improving the current situation. To that end, we renew our request (which several other tribes and states have made) to review a draft of NOAA's "findings letter" before it is finalized. We believe that the *National Wildlife Fed'n v. National Marine Fisheries Service* remand forum provides an excellent opportunity to explore these matters.

Sincerely,


Anthony D. Johnson
Chairman